

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Franck Le

Title: IPV6 ADDRESS OWNERSHIP SOLUTION
BASED ON ZERO-KNOWLEDGE
IDENTIFICATION PROTOCOLS OR BASED ON
ONE TIME PASSWORD

Appl. No.: 10/615829

Filing Date: 7/10/2003

Examiner: Yogesh Paliwal

Art Unit: 2435

Confirmation Number: 8920

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant is in receipt of the Notice of Allowance for the above- captioned application. Applicant disagrees with the Determination of Patent Term Adjustment (PTA) under 35 U.S.C. § 154(b) and presents the following facts per the procedure set forth in 37 C.F.R. § 1.705(b) to support their contention that the patent term adjustment should be 967 days instead of 653 days as calculated by the United States Patent and Trademark Office (PTO).

The Patent Office determined that the patent was entitled to 653 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 967 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	1074 days
(b) Total Applicant delay:	107 days
Final PTA Determination:	967 days

Applicants therefore respectfully request that the patent be accorded 967 days PTA.

The patent is not subject to a terminal disclaimer.

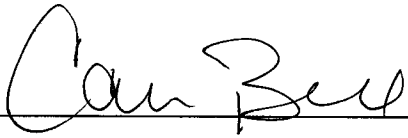
Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date March 6, 2009

FOLEY & LARDNER LLP
Customer Number: 23524
Telephone: (608) 258-4263
Facsimile: (608) 258-4258

By _____

Callie M. Bell
Attorney for Applicant
Registration No. 54,989

CLOSE WINDOW

ALL CASES SELECT CASE

Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 088245-0111

Application Number: 10/615829

Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	07/10/2003	0		
	14 month From Application date	09/10/2004	428		
	3 Year Period Starts	07/10/2006	1,096		
Edit Delete	Non-Final Office Action	10/10/2006	1,188	(760)	
	Non-Final Office Action + 3 months	01/10/2007	1,280		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	02/12/2007	1,313		33
Edit Delete	Final Office Action	05/18/2007	1,408		
	Final Office Action + 3 months	08/18/2007	1,500		
Edit Delete	Request For Continued Examination	08/20/2007	1,502	(406) 1074	2
	3 Year Period Stopped	08/20/2007	1,502		
Edit Delete	Non-Final Office Action	11/01/2007	1,575		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	02/01/2008	1,667		
Edit Delete	Restriction Requirement	04/21/2008	1,747		
Edit Delete	Restriction Requirement Response Received at PTO	05/02/2008	1,758		
Edit Delete	IDS under 1.704(c)(8) filed at PTO	06/12/2008	1,799		41
Edit Delete	Final Office Action	08/01/2008	1,849		
Edit Delete	Final Office Action Response Received at PTO	09/25/2008	1,904		
Edit Delete	Advisory Action	10/20/2008	1,929		
	Final Office Action + 3 months	11/01/2008	1,941		
Edit Delete	Notice of Appeal Received at PTO	12/02/2008	1,972		31
Edit Delete	Appeal Brief Received at PTO	12/08/2008	1,978		
Edit Delete	Notice of Allowance	02/06/2009	2,038		
	Projected Patent Grant Date	08/18/2009	2,231		
			Totals:	1,074	107
			PTA:	967	

Created and maintained by



Version: 3.02.05

LOGIN: Cindy Blazek

IP: 10.24.5.13

Foley & Lardner LLP